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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANCIS PINAULT and ALAIN GUIRAUTON

Appeal 2009-006035
Application 09/873,357¹
Technology Center 2400

Decided: November 24, 2009

Before KENNETH W. HAIRSTON, MARC S. HOFF, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The real party in interest is Alcatel.

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1, 2, and 4-13. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' invention relates to access control for user terminals connected to the Internet via a private network such as a company's private automatic branch exchange. The inventive method temporarily stores the stream of multimedia data addressed to a user terminal, downstream filtering being applied by an arrangement for authorizing or blocking transmission of the data stream to the terminal as a function of particular criteria applied to the received data stream in the private network (Spec. 3).

Claim 1 is exemplary of the claims on appeal:

1 A method of providing access control for user terminals connected to a private network, wherein said terminals access a computer network enabling exchange of information via a private access node to which said terminals are connected and an access server, the method comprising:

temporarily storing a multimedia data stream received from said computer network and addressed to a user terminal of said user terminals connected to said private network in response to an access request from said user terminal in order to perform filtering based on data content of said multimedia data stream, said filtering authorizing or blocking transmission of said multimedia data stream to said terminal as a function of particular criteria provided from said private network and applied to the multimedia data stream received at said private access node, and

analyzing a signature included in said multimedia data stream for the purpose of said filtering.

The Examiner relies upon the following prior art in rejecting the claims on appeal:

Toga	US 6,041,355	Mar. 21, 2000
Fritch	US 6,105,132	Aug. 15, 2000

Cotten US 6,330,590 B1 Dec. 11, 2001

Hitson US 2002/0010759 A1 Jan. 24, 2002

Microsoft Press Computer Dictionary, 2nd Edition, 360 (1993).

Merriam-Webster's Collegiate Dictionary, 10th Edition, 1091 (1994).

Claims 1, 2, 4, and 8-12 stand rejected under 35 U.S.C. § 102(a) as anticipated by or, in the alternative, rejected under 35 U.S.C. § 103(a) as being unpatentable over, Toga.

Claims 5-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Toga in view of Fritch and Cotten.

Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Toga in view of Hitson.

Throughout this decision, we make reference to the Appeal Brief ("App. Br.," filed June 9, 2008), the Reply Brief ("Reply Br.," filed October 1, 2008), and the Examiner's Answer ("Ans.," mailed August 15, 2008) for their respective details.

ISSUES

Appellants argue that Toga's teaching of content description language tags does not meet the claim limitation of "analyzing a *signature* included in said multimedia data stream for the purpose of said filtering" (App. Br. 10). Appellants assert that the Specification provides an exemplary embodiment of a "signature" (App. Br. 12).

With respect to dependent claims 5-7, Appellants argue that Cotten does not cure the deficiencies of Toga with respect to a "signature," and does not teach retaining the multimedia data stream to enable a further check

in the event of non-conformance, or to enable interruption of a subsequently received multimedia data stream (App. Br. 14-15).

Appellants' contentions present us with the following issues:

1. Have Appellants shown that the Examiner erred in finding that Toga teaches analyzing a signature included in said multimedia data stream for the purpose of filtering?

2. Have Appellants shown that the Examiner erred in finding that the combination of Toga and Cotten teaches retaining the multimedia data stream to enable a further check in the event of non-conformance, or to enable interruption of a subsequently received multimedia data stream?

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

The Invention

1. According to Appellants, "a signature can indicate the existence of restrictions on the use of the data that it accompanies, for example. This is known in the art, and applies in particular to SDMI (secure digital music initiative) signatures accompanying data constituting certain multimedia files (Spec. 10).

Toga

2. Toga teaches monitoring content description language returned from the internet for tags that indicate information about the content of the data (col. 3, ll. 13-16).

3. Such tags can include indications that the incoming data includes sexual or violent content (col. 4, ll. 14-16; Fig. 2).

4. Toga teaches the ability to prevent the retrieval of material from the Internet deemed to have improper content (col. 1, l. 65 – col. 2, l. 4).

Fritch

5. Fritch teaches methods and systems for managing the access of information objects by a task operating on behalf of a user of a network or other computer system (col. 2, ll. 38-41).

Cotten

6. Cotten teaches using retained non-conformance data, specifically email deemed to be “SPAM,” from which addresses and personal reference have been stripped (col. 3, ll. 59-67).

7. This data, coded in abbreviated format, is retained to enable interruption of a subsequently received multimedia data stream (i.e., the retained data serves to identify that the same SPAM email message has been received subsequently)(col. 3, ll. 31-35).

Hitson

8. Hitson teaches delivery of multimedia content to a computer, personal digital assistant, or other electronic device. Said content may include advertisements, and may include security restricting use of some content to specific devices, specific users, or specific number of playbacks (Abstract).

Dictionary definitions of “signature”

9. The Microsoft Press Computer Dictionary defines “signature” as “[a] sequence of data used for identification, such as an identifier appended to a message in an electronic mail message or in a fax.” Microsoft Press computer dictionary, Microsoft Press, 1994, p. 360.

10. Merriam-Webster's Collegiate Dictionary defines "signature," in pertinent part, as "something (as a tune, style, or logo) that serves to identify; *also*: a consistent mark." Merriam-Webster's collegiate dictionary, Merriam-Webster, Incorporated, 1997, p. 1091.

PRINCIPLES OF LAW

"[I]t is inappropriate for appellants to discuss in their reply brief matters not raised in . . . the principal brief[]. Reply briefs are to be used to reply to matter[s] raised in the brief of the appellee." *Kaufman Company, Inc. v. Lantech, Inc.*, 807 F.2d 970, 973 n.* (Fed. Cir. 1986). "Considering an argument advanced for the first time in a reply brief . . . is not only unfair to an appellee but also entails the risk of an improvident or ill-advised opinion on the legal issues tendered." *McBride v. Merrell Dow and Pharms., Inc.*, 800 F.2d 1208, 1211 (D.C. Cir. 1986) (internal citations omitted).

There are cogent reasons for not permitting an appellant to raise issues or arguments in a reply brief. Among them are the unfairness to the appellee who does not have an opportunity to respond and the added burden on the court that a contrary practice would entail. As the Tenth Circuit put it, permitting an appellant to raise new arguments in a reply brief "would be unfair to the court itself, which without the benefit of a response from appellee to an appellant's late-blooming argument, would run the risk 'of an improvident or ill-advised opinion, given [the court's] dependence . . . on the adversarial process for sharpening the issues for decision.'" *Headrick [v. Rockwell Int'l Corp.]*, 24 F.3d [1272,] 1278 [(10th Cir. 1994)], (quoting *Herbert v. Nat'l Academy of Sciences*, 974 F.2d 192, 196 (D.C. Cir. 1992)).

Carbino v. West, 168 F.3d 32, 34-35 (Fed. Cir. 1999).

“A rejection for anticipation under section 102 requires that each and every limitation of the claimed invention be disclosed in a single prior art reference.” *See In re Buszard*, 504 F.3d 1364, 1366 (Fed. Cir. 2007) (quoting *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994)). Anticipation of a claim requires a finding that the claim at issue reads on a prior art reference. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (quoting *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

On the issue of obviousness, the Supreme Court has stated that “the obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007). Further, the Court stated “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416. “One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of the invention a known problem for which there was an obvious solution encompassed by the patent’s claims.” *Id.* at 419-420.

Our reviewing court states that “claims must be interpreted as broadly as their terms reasonably allow.” *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989). Our reviewing court further states that “the words of a claim ‘are generally given their ordinary and customary meaning.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc)(internal citations omitted). The “ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the

patent application.” *Id.* at 1313. The description in the specification can limit the apparent breadth of a claim in two instances: (1) where the specification reveals a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess; and (2), where the specification reveals an intentional disclaimer, or disavowal, of claim scope by the inventor. *Id.* at 1316.

ANALYSIS

CLAIMS 1, 2, 4, AND 8-12

We select claim 1 as representative of this group, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii).

Appellants argue that Toga fails to disclose “analyzing a signature included in said multimedia data stream for the purpose of said filtering,” as claim 1 requires (App. Br. 10). According to Appellants, Toga’s teaching of CONTENT tags in its content description language, as part of a multimedia data stream, does not correspond to the claimed “signature” (App. Br. 10-11).

We are not persuaded by Appellants’ arguments. Appellants state that the Specification “clearly states an exemplary embodiment of the ‘signature’[,] where the ‘signature’ can indicate the existence of restrictions on the use of the data that it accompanies and in particular to SDMI (secure digital music initiative) signatures accompanying data constituting certain multimedia files” (App. Br. 12; FF 1). We agree with Appellants, however, that because the Specification discloses only that a signature *can* indicate the existence of restrictions, this discussion of “signature” in the Specification

constitutes merely an exemplary embodiment and does not limit the term “signature” to the SDMI context.

The Examiner finds, and we agree, that dictionary definitions support the Examiner’s interpretation of Toga as teaching a “signature.” The Microsoft Press Computer dictionary defines signature as “a sequence of data used for identification” (FF 9), and Merriam-Webster’s Collegiate Dictionary defines signature as “something ... that serves to identify” (FF 10). We find that the content tags taught by Toga are used to identify, and/or serve to identify, incoming data streams having content deemed inappropriate. *See Phillips*, 415 F.3d at 1313. We thus agree with the Examiner that the content tags taught by Toga equate to the “signature” recited in Appellants’ claims.

The Examiner finds, and we agree, that Toga teaches monitoring content description language returned from the internet for tags that indicate information about the content of the data (FF 2). Such tags can include indications that the incoming data includes sexual or violent content (FF 3). We find that this teaching of Toga corresponds to Appellants’ disclosure that a signature can indicate the existence of restrictions on the use of the data that it accompanies, because Toga teaches the ability to prevent the retrieval of material from the Internet deemed to have improper content (FF 4).

Last, we note that Appellants argue that Toga fails to teach “transmission of said multimedia data stream to said terminal as a function of particular criteria provided from said private network” (Reply Br. 5). We find that this argument (alleging that the criteria in Toga are not provided from the private network) is not entitled to consideration, as it was

made by Appellants for the first time in the Reply Brief. *See McBride*, 800 F.2d at 1211.

Thus, because Appellants have not shown error in the Examiner's rejection of representative claim 1 under § 102 or, in the alternative, § 103, we will sustain the Examiner's rejection of claims 1, 2, 4, and 8-12 as being unpatentable over Toga.

CLAIM 5

Appellants argue that Cotten does not cure the deficiencies alleged with regard to the Toga reference (i.e., analyzing a signature), and that Cotten does not teach that the multimedia data stream is retained to enable a further check in the event of non-conformance (App. Br. 15). We do not find Appellants' arguments convincing of Examiner error.

First, as explained *supra* with reference to claim 1, we find that Toga teaches "analyzing a signature ... for the purpose of said filtering." Second, we agree with the Examiner's finding that Cotten teaches retaining data to enable a further check in the event of non-conformance (Ans. 14). Cotten teaches using retained non-conformance data, specifically email deemed to be "SPAM," from which addresses and personal reference have been stripped (FF 6). This data, coded in abbreviated format, is retained to enable interruption of a subsequently received multimedia data stream (i.e., the retained data serves to identify that the same SPAM email message has been received subsequently)(FF 7).

Because we find that Appellants have not established error in the Examiner's *prima facie* case of obviousness, we will sustain the rejection of claim 5 under § 103 as being unpatentable over Toga in view of Fritch and Cotten.

CLAIM 6

The Examiner finds that Cotten teaches that data for which non-conformance has been detected in said multimedia data stream is retained to enable interruption of a subsequently received multimedia data stream (Ans. 14). We agree with the Examiner, for the same reasons expressed with respect to claim 5, *supra*.

We note that Appellants argue that Cotten fails to teach interruption of said multimedia data stream *before complete analysis* of said subsequently received multimedia data stream (Reply Br. 9-10). We find that this argument (directed to whether Cotten teaches interruption of the data stream before complete analysis) is not entitled to consideration, as it was made by Appellants for the first time in the Reply Brief. *See McBride*, 800 F.2d at 1211.

Because Appellants have not established error in the Examiner's rejection of claim 6 under § 103, we will sustain the rejection.

CLAIM 7

Appellants' argument for the separate patentability of claim 7 (Reply Br. 10-11) is not entitled to consideration, as it was made by Appellants for the first time in the Reply Brief. *See McBride*, 800 F.2d at 1211. We therefore affirm the rejection of claim 7 under § 103 as being unpatentable over Toga in view of Fritch and Cotten.

CLAIM 13

Appellants present no separate argument for the patentability of claim 13; merely alleging that claim 13 is patentable by virtue of its dependency from claim 1, as Hitson fails to cure the deficient disclosure of Toga (Reply Br. 11). Because we find *supra* that Toga teaches or renders obvious all the

limitations of claim 1, then, we find no error in the Examiner's rejection of claim 13 under § 103 as being unpatentable over Toga in view of Hitson, and we affirm the rejection.

CONCLUSIONS OF LAW

1. Appellants have not shown that the Examiner erred in finding that Toga teaches analyzing a signature included in said multimedia data stream for the purpose of filtering.

2. Appellants have not shown that the Examiner erred in finding that the combination of Toga and Cotten teaches retaining the multimedia data stream to enable a further check in the event of non-conformance, or to enable interruption of a subsequently received multimedia data stream.

ORDER

The Examiner's rejection of claims 1, 2, and 4-13 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2009-006035
Application 09/873,357

AFFIRMED

ELD

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